



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of US Financial, d/b/a Awesome Autos 2

Case No: DOT-15-0029

FINAL DECISION

On October 16, 2015, Margaret Quast filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of US Financial, d/b/a Awesome Autos 2, (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Oshkosh Northwestern, a newspaper published in Oshkosh, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 29, 2016. No additional claims were filed. Margaret Quast's claim was forwarded by the Department to the Division of Hearings and Appeals.

On March 18, 2016, the undersigned Administrative Law Judge (ALJ) issued a Preliminary Determination in this matter. On April 12, 2016, Andre Beisinger, on behalf of the Dealer, filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to due notice an evidentiary hearing was conducted in Oshkosh, Wisconsin, on May 6, 2016. Mark F. Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Margaret Quast
4326 County Road "T"
Oshkosh, WI 54904

Andre and Shelly Beisinger
US Financial, d/b/a Awesome Autos 2
5095 State Road 21
Oshkosh, WI 54904-7115

Auto Owners Insurance Company
PO Box 30660
Lansing, MI 48909

The Preliminary Determination awarded Margaret Quast the amount her daughter, Lyn Burgess, had already paid for repairs to the vehicle Margaret Quast had purchased from the Dealer plus the amount of the estimate for other recommended repairs. Andre Beisinger filed an objection to the Preliminary Determination. The objection did not state any specific grounds. At the hearing, Mr. Beisinger made two objections to the Preliminary Determination. Firstly, Mr. Beisinger argued that some of the repairs on Quast's claim were for equipment that met the Department of Transportation's standards. Secondly, for repairs to the vehicle that Mr. Beisinger did not dispute, he argued that the charges for the repairs were excessive.

The award for the estimate cost for other recommended repairs was based on an impression that the Dealer had either not conducted a reasonable presale inspection of the vehicle or failed to disclose the results of the inspection if one had been conducted. Some of the recommended repairs were related to the vehicle's power steering system and the steering rack and pinion. The Department's investigator contacted the previous owner of the vehicle. The previous owner confirmed that the rack and pinion needed to be replaced when he traded the vehicle to the Dealer. Lyn Burgess also provided credible testimony at the hearing that the vehicle steered hard when she purchased it. The defective power steering was either not discovered by the Dealer during the presale inspection or not disclosed on the Wisconsin Buyers Guide. The claim for the cost of these repairs is allowed. However, based on evidence presented at the hearing, the cost of the other services recommended by Little Wolf Automotive have been disallowed in the Final Decision.

Mr. Beisinger also argued that the amount Little Wolf Automotive charged Ms. Burgess for repairs was excessive. He presented evidence of the cost of parts from other suppliers and labor estimates from another repair shop. These estimates were made based on Mr. Beisinger's description of the repairs and without the repair shop actually inspecting the vehicle purchased by Margaret Quast. This is an insufficient basis to alter the reimbursement awarded to Margaret Quast for the repairs to fluid leak and power steering to her vehicle. The award has been reduced based on the lack of evidence that the other defects existed at the time the vehicle was sold to Margaret Quast, but the actual amount Ms. Burgess paid for the repairs for the fluid leak and the power steering system will be awarded to her.

Findings of Fact

1. US Financial, d/b/a Awesome Autos 2, (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 5095 State Road 21, Oshkosh, Wisconsin.
2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since November 2, 2010 (Bond #66096416 from Auto Owners Insurance Company).

3. On March 2, 2015, Margaret Quast (Quast) purchased a 2005 Cadillac STS automobile, vehicle identification number 1G6DC67A550189877, from the Dealer. According to the purchase contract, Quast paid \$19,012.00, including tax and registration fees, for the vehicle. The purchase price also included \$2,800.00 for a service contract. Quast purchased the vehicle for her daughter, Lyn Burgess (Burgess), to use.

4. Within a week of Quast purchasing the vehicle, Burgess noticed a fluid leak and took the vehicle back to the Dealer. The Dealer repaired the leak by replacing the radiator and a cooling line, but the next week the radiator line “blew” stranding Burgess on the side of the road. Burgess had the vehicle towed to a repair shop, Little Wolf Automotive in Manawa, Wisconsin. Burgess attempted to contact the Dealer about the problems she had with the vehicle, but was unsuccessful. She then had Little Wolf Automotive repair it. The mechanic at Little Wolf Automotive concluded that the Dealer had used the wrong type of hose for a transmission cooler line when it repaired the fluid leak. The mechanic installed the correct hose from the transmission to the radiator. The total charge to have the vehicle towed and repaired was \$715.37.

5. On April 1, 2015, Quast filed a complaint with the Department’s Dealer Section against the Dealer. Quast told the investigator for the Department that she was not given a copy of the Wisconsin Buyers Guide for the vehicle by the Dealer. The investigator contacted the Dealer about Quast’s complaint. The Dealer refused to provide any records for the deal to the investigator. The investigator also contacted the mechanic who worked on Quast’s vehicle at Little Wolf Automotive. The mechanic confirmed that the Dealer had used the wrong type of hose to repair the fluid leak. The mechanic also informed the investigator that he had contacted the warranty company about covering the cost of the repair, but was told the warranty would not cover the repairs. The investigator was unable to resolve the complaint and advised Quast to file a claim against the Dealer’s surety bond.

6. Before Quast filed a claim, Burgess took the vehicle back to Little Wolf Automotive and had it inspected. Burgess took the vehicle to Little Wolf Automotive on July 23, 2015. By that time Burgess had driven the vehicle for approximately 8,000 miles. Little Wolf Automotive provided her with an itemized list of all repair services they recommended for the vehicle. The services recommended by the Little Wolf Automotive mechanic were remove and replace power steering rack, remove and replace power steering hose, remove and replace radiator, front brake service, and rear brake service (exh. 6). The estimate for parts and labor to complete the recommended repairs was \$3,803.50 (exh. 1). On October 16, 2015, Quast filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$4,602.09, and is itemized as \$798.59, the amount already paid for repairs to the vehicle, plus \$3,803.50, the estimate for additional repairs needed.

7. At the hearing, Andre Beisinger (Beisinger) conceded that he should be responsible for the repairs completed by Little Wolf Automotive in March of 2015, because they were necessitated by the failed repairs his dealership had performed. However, he contended the amount Little Wolf Automotive had charged Burgess was excessive. Burgess did make an effort

to contact Beisinger before she authorized Little Wolf Automotive to repair the vehicle. This was his opportunity to arrange to have the vehicle repaired at a lower cost, if possible.

8. The remainder of Quast's claim is for services recommended by Little Wolf Automotive. Little Wolf Automotive inspected the vehicle in July of 2015, which is five months after Quast purchased it. Burgess had driven the vehicle for 8,000 miles before it was inspected. Of the services recommended, the only one that there is evidence to support a finding that a defect existed at the time the Dealer sold the vehicle to Quast is for the repairs to the power steering system. The Department's investigator contacted the previous owner of the vehicle. The previous owner confirmed that the rack and pinion needed to be replaced when he traded the vehicle to the Dealer. Burgess also provided credible testimony at the hearing that the vehicle steered hard when she purchased it. The defective power steering was either not discovered by the Dealer during the presale inspection or not disclosed on the Wisconsin Buyers Guide. The cost of the repairs to the power steering system is allowable.

9. The total charge by Little Wolf Automotive to remove and replace the power steering rack, power steering pump assembly, and the power steering hose was \$2,405.84. Quast is only claiming what Burgess actually paid to have the vehicle repaired (exh. 6). This amount of her claim should be allowed. There is no evidence that the other repairs recommended by Little Wolf Automotive relate to defects existing at the time Quast purchased the vehicle. It is particularly noteworthy that with respect to the brakes, the mechanic from Little Wolf Automotive noted that they were only "close to the end useful life" five months and 8,000 miles after Quast purchased the vehicle. The cost of the remaining recommended services are not allowable.

10. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The problems Burgess experienced with the vehicle immediately after it was purchased should have been discovered during a reasonable presale inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the automobile at the time it was offered for sale. No problems with the vehicle were disclosed on the Wisconsin Buyers guide signed by Margaret Quast. Either the Dealer failed to perform a reasonable presale inspection of the vehicle and discover the defects or, if a reasonable presale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

11. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a presale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Quast sustained a loss as the result of this violation.

11. Quast's claim arose on March 2, 2015, the day she purchased the vehicle that is the subject of her claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company was in effect and is, therefore, a timely claim. Quast submitted documentation to support a claim in the amount of \$3,121.21, the amount Burgess paid for towing and repairs in March of 2015 plus the cost of the repairs to the power steering system.

Discussion

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

...

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Quast's claim against the Dealer's surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. Burgess began experiencing problems with the vehicle purchased from the Dealer as soon as Quast purchased it. The Dealer either failed to perform a reasonable presale inspection of the vehicle or to disclose the results of the presale inspection on a Wisconsin Buyers Guide displayed on the vehicle when it was offered for sale. Either way the Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). A violation of either of these sections, in turn, constitutes a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat.

§§ 218.0116(1)(bm) and (gm) are both sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Quast sustained a loss as a result of this violation.

Conclusions of Law

1. The claim of Margaret Quast arose on March 2, 2015, the day she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on November 2, 2014. The claim arose during the period covered by the surety bond.

2. Margaret Quast filed a claim against the motor vehicle dealer bond of the Dealer on October 16, 2015. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Margaret Quast's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Margaret Quast has supplied documentation to support a claim in the amount of \$3,121.21. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

Order

The claim filed by Margaret Quast against the motor vehicle dealer bond of US Financial, d/b/a Awesome Autos 2, is APPROVED in the amount of \$3,121.21. Auto Owners Insurance Company shall pay Margaret Quast this amount for her loss attributable to the actions of US Financial, d/b/a Awesome Autos 2.

Dated at Madison, Wisconsin on June 10, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.